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TODAY'S NEWS

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FCC Sought More Data from EAS CAP Waiver Seekers

The FCC Public Safety Bureau has pressed for emergency alert system rule compliance after getting waiver requests in past months from rural cable operators and TV stations, some of those seeking exemptions told us. The requests claimed insufficient broadband availability prevented them from upgrading EAS for a new format that requires Internet connectivity (CD July 2 p9) by a June 30 deadline. One radio station's waiver request was denied, while the bureau wanted more details about others' efforts to acquire broadband service before ruling on waivers, industry officials said. They said some inquiries inspired EAS participants to find innovative ways to connect rural stations and cable headends to broadband.

A few dozen EAS participants in late spring and early summer sought exemption from an FCC requirement that became ef-

At Our Deadline

The FCC late Monday filed its defense against the Verizon-led challenge of its net neutrality rules with the Court of Appeals for the D.C. Circuit. "Openness has been essential to the Internet's extraordinary success," the FCC asserts in the pleading (<http://xrl.us/bno8qa>). "By keeping barriers to entry low, openness enables anyone -- from large corporations, to start-up companies, to college students -- to create innovative applications." Prior to the approval of net neutrality rules in December 2010, "there were significant threats to openness, and thus to the engine that has driven investment in broadband facilities," the agency said. "The Commission responded to these threats by adopting modest, high-level rules -- in large measure continuations of longstanding, bipartisan FCC policies -- that preserve Internet openness and its concomitant incentives for innovation and investment. ... These sensible rules of the road fulfill specific statutory directives to advance broadband investment and to ensure that wireless licensees act in the public interest." "Internet freedom is essential for U.S. innovation and economic leadership," Chairman Julius Genachowski said in a statement. "As we predicted, since the FCC's adoption of Internet freedom protections ... which increased certainty and strengthened incentives to innovate and invest, we've seen significant increases in innovation and investment in Internet applications and services as well as in broadband networks."

fective June 30 for the new Common Alerting Protocol EAS message format, docket 04-296 shows (<http://xrl.us/bno7na>). CAP, unlike traditional EAS using the so-called broadcast daisy chain for government agencies to send alerts, uses a website for the government to distribute warning messages to all multichannel video programming distributors, radio and TV stations and satellite radio. Those MVPD and broadcast outlets then pass the warnings on to viewers and listeners. CAP is designed to expand transmission of emergency alerts to other platforms and devices, such as websites and cellphones (CD June 13 p5). Most EAS alerts continue using the traditional daisy-chain system, as shown in the Gulf Coast states during Hurricane Isaac last month, a story later this week in *Communications Daily* will report.

The bureau sent letters to waiver requesters in recent months asking for more detail about the efforts the companies made to obtain broadband service, industry officials told us. “The gist of their questions seemed to try to determine if the broadcaster made a good-faith effort to get broadband before the deadline,” said broadcast lawyer Howard Liberman of Drinker Biddle. He filed Townsquare Media's (<http://xrl.us/bno7i7>) waiver request. The radio broadcaster needed to install a microwave relay system to deliver broadband to its WDLA (AM/FM) Walton, N.Y., which can only get dial-up ISP access, the filing said. The company asked for a delay until installation, which Liberman said is occurring and will put the station in compliance. The bureau letter asked for a reply to questions in 30 days, Liberman said. A bureau spokeswoman had no comment for this story.

The owner of two small Alaska radio stations delayed initiating broadcasting at a newly acquired third station in the state after the bureau denied his waiver request. Kenai Broadcasting owner Charles Dunham said the bureau denied the waiver request (<http://xrl.us/bnbvn5>) for his low-power FM station KKNi Sterling and suggested he acquire broadband through satellite or other wireless delivery services. Dunham said that instead of subscribing to satellite broadband delivery — which he said was expensive and unreliable — he installed a makeshift broadband relay system using microwave dishes and unlicensed radios that he said gives the remote LPFM station access to the CAP alerts.

Townsquare used microwave technology to connect its rural station after neither Time Warner Cable nor the local ILEC could connect it to broadband, Lieberman said. Townsquare agreed to pay costs nearing \$15,000 in one case to connect the station, but the ISPs were still unable to perform the installation, he said, forcing Townsquare to improvise a microwave link to connect the station. Dunham said the \$2,000 in microwave equipment costs were a better option than satellite broadband service, which he thought was too unreliable for the service rates. The Western Oregon Radio Club also found a wireless solution to connect its rural LPFM station to broadband, said broadcast lawyer Peter Tannenwald of Fletcher Heald, who sought the waiver (<http://xrl.us/bno7mj>). The price “couldn’t be much” due to the club’s limited budget, he said.

CAP compliance can be prohibitively expensive for some small cable operators that serve a few hundred houses, said cable lawyer James Moskowitz of Cinnamon Mueller. He filed CAP EAS waivers for clients including New Wave Communications, which (<http://xrl.us/bndpjf>) requested a six-month extension for 18 small cable systems that lacked broadband access. New Wave and other small operators believe compliance can be expensive for operators of small systems lacking substantial budgets for technological upgrades, Moskowitz said. “In many cases, these providers see themselves more as providing a community service. They’re not making money,” he said. “This comes out of their pocket.”

West River Cable, with systems including four serving rural South Dakota communities and two Indian reservations outside of the local telco’s broadband service area, said it would have to shut the sys-

tems down if forced to comply, noting they're already unprofitable. Equipment for each system would cost \$5,150.00, plus installation and other charges, the waiver request said (<http://xrl.us/bno7mw>). In a hand-written filing, Southern Cayuga County CableVision owner Ray Dyer included documentation of the \$8,400 second mortgage on his residence he said he obtained to pay for the CAP equipment to bring the Locke, N.Y., system into compliance. Dyer asked for an extension due to a back order of CAP equipment just before the FCC's deadline (<http://xrl.us/bno7my>), an issue raised in several waiver filings.

Delivering broadband to rural systems isn't just an issue for small operators. Comcast and Charter Communications also asked in June for extensions while they work to connect several rural systems. Charter told the FCC it was exploring satellite and DSL for some of the 32 locations that lacked broadband (<http://xrl.us/bno7na>). For Kenesaw, Neb., the company was researching a fiber connection that will take seven months to construct at a cost of \$165,000. Comcast was building out a satellite delivery system for its remote systems at "substantial 'per subscriber' implementation costs," the operator said (<http://xrl.us/bncgdp>). Charter and Comcast had no comment for this story. The American Cable Association asked the FCC to establish a standard waiver procedure for small operators that didn't have broadband access, instead of evaluating them on a case-by-case basis (CD Jan 12 p8). After the bureau didn't act, the ACA withdrew the petition. — *Terry Lane*

AT&T Disagrees

Alliance Forms to Push for 700 MHz Interoperability Mandate

The new Interoperability Alliance formed to push for an FCC 700 MHz interoperability mandate. Concurrent with a launch event on Capitol Hill Monday, the Rural Cellular Association said it was changing its name to the Competitive Carriers Association. The change to CCA reflects that Sprint Nextel and T-Mobile are now members. The name change had been rumored since earlier in the year (CD March 14 p7).

Alliance members said Monday the time is ripe for the FCC to act, especially since the initial petition seeking 700 MHz device interoperability was filed in September 2009. Alliance members told us they believe two members of the FCC, Democrats Mignon Clyburn and Jessica Rosenworcel, are ready to vote to impose a mandate. The agency approved an interoperability notice of proposed rulemaking at its March meeting. Chairman Julius Genachowski said at the time regulation may not be the answer and encouraged industry players to come up with a voluntary solution (CD March 22 p2).

"As 4G LTE is deployed across the United States, it is critical that these advanced mobile broadband services and devices are available to all Americans," said CCA President Steve Berry. "With an interoperable lower 700 MHz band, the FCC will provide operators and consumers with economies of scale to make a greater variety of devices available at lower costs and support rapid nationwide buildout, including in rural areas and regional markets."

AT&T, which opposes a mandate, disputed comments by alliance members. "Having government mandates in this area will do nothing but slow down the deployment of next-generation mobile broadband, causing slower data speeds, poor reception and dropped calls for consumers," a company spokesman said. "The commission should reject these calls for unnecessary government intrusion in the competitive wireless industry."

“The outlook for FCC action is positive,” said a carrier executive, who predicted at the launch that industry negotiations will not lead to a meaningful agreement. “After three years the FCC has amassed a heap of comments on this question and, more recently, substantial quantitative data from the impacted industry players and consumer groups,” the lawyer told us. “These comments and the technical data demonstrate a need for ... no technical impediment to restoring interoperability at the Lower 700 MHz. There also appear to be at least two votes at the commission in favor of restoring interoperability at Lower 700MHz.”

New America Foundation's Wireless Future Project supported calls for a mandate. “Convergence to a single technology — LTE for 4G communications — gives consumers seamless coverage across carriers, better service, and more competition,” said Michael Calabrese, representing NAF. “Without interoperability, American consumers and our economy will be denied the cost savings available from greater scalability, reducing consumer access to the most innovative 4G devices. We look forward to the FCC quickly restoring this key fundamental for a robust, innovative wireless future.”

“The new Interoperability Alliance is a transparent attempt to pick winners and losers in the competitive wireless marketplace,” said Fred Campbell, director of the Competitive Enterprise Institute's Communications Liberty and Innovation Project. “The U.S. has long implemented a policy of technological neutrality, which has resulted in the deployment of non-interoperable technologies by carriers in many bands, including WiMAX, CDMA, and GSM. Yet, this new alliance is seeking interoperability in only one band where there are unique interference issues from adjacent bands. The alliance members are seeking a competitive advantage from the FCC in the 700 MHz band while enjoying technological neutrality in their own spectrum.”

The name change to CCA comes in advance of the group's annual convention in Las Vegas Sept. 23-26. “Over the past several years, the wireless industry has seen increased consolidation and the emergence of a market duopoly,” Berry said of the name change. “In light of the duopoly and the threat of further industry consolidation, our members — both large and small — all share a common goal.” — *Howard Buskirk*

Retailers Praise Decision

9th Circuit Judges Side with CTIA on San Francisco's Cellphone Labeling Law

CTIA won another round of its fight against San Francisco's cellphone labeling law. A panel of three federal appeals judges sided with the association in ruling on the cross appeals of a lower court's injunction against the ordinance (<http://xrl.us/bno8ej>). The appeals stemmed from a city ordinance that would require cellphone retailers to provide information about phones' RF emissions and information about how to limit exposure to such emissions. A lower court had approved a revised version of a fact-sheet the city could require to be distributed where cellphones are sold, but the 9th U.S. Court of Appeals disagreed Monday. The 9th Circuit's jurists signaled they wouldn't rule for the city, at oral argument last month (CD Aug 10 p1). A CTIA spokeswoman declined to comment. A spokesman for the San Francisco Mayor's Office referred our query to the City Attorney's Office, which did not immediately respond.

“Appellant CTIA correctly points out, however, that the revised fact sheet contains more than just facts,” a memorandum from the court said. “It also contains San Francisco's recommendations as to what consumers should do if they want to reduce exposure to radiofrequency emissions. This language could prove to be interpreted by consumers as expressing San Francisco's opinion that using cell phones is dangerous.”

The FCC has its own RF exposure limits, the memo said. “We cannot say on the basis of this record that the fact sheet, as modified by the district court, is both ‘purely factual and uncontroversial,’” 9th Circuit said. “The court therefore erred in holding the city could compel distribution of the revised fact sheet.”

The decision is "an important affirmation of retailers' First Amendment Rights," said Robert Schwartz, a lawyer representing consumer electronics manufacturers at Constantine Cannon and counsel to the Consumer Electronics Retailers Coalition, which filed an amicus brief in support of CTIA. “The San Francisco Ordinance challenged by CTIA — The Wireless Association would have commandeered local retail facilities for the expression of controversial opinions rather than facts,” he said. “The opinions were unsupported by and contrary to the research and guidance of the Federal Communications Commission.”

The court affirmed a district court’s order preliminarily enjoining enforcement of the order, and vacated its subsequent order modifying the injunction, the memo said in remanding the case to U.S. District Court in San Francisco. — *Josh Wein*

Broadband Groundwork

BTOP Grantees Face New Challenges and Opportunities in Final Year, NATOA Panelists Say

A new era is beginning for U.S. broadband stimulus initiatives, panelists in a National Association of Telecommunications Officers and Advisors webinar said Monday. NTIA’s Broadband Technology Opportunities Program (BTOP) will end next year after launching scores of projects in 2010, and the seminar focused on what will happen next for all these federally funded projects and their legacy. These BTOP grants manifested in about \$4 billion invested in 233 projects that built new infrastructure, public safety networks, computer training centers and mapping initiatives.

“Sustainability is a really, really important challenge,” said municipal lawyer Jim Baller of the Baller Herbst telecom law firm. “In part it’s a challenge because we know the value of advanced communications infrastructure is going to be there, it’s going to grow, it’s going to grow in many ways that are not even imaginable today. But the transition from the development of networks to the point at which we have a wide range of must-have applications that will require and be driven by the existence of these networks is ahead of us. We have a transitional period we’re going to have to go through.”

The fiber infrastructure “is not going to be outmoded in five years,” said Broadband Program Director Lori Sherwood of One Maryland-Inter-County Broadband Network. The “legacy” of BTOP decades down the road will be the “spider web of fiber across the country,” she said. She described how this fiber may have value for years and how BTOP projects may be able to remain sustainable by tapping “FirstNet and the next sets of grant opportunities,” building on the resource that’s in the ground now from the coming public safety interoperable network. Baller pointed to the metrics that he said indicated success, such as 57,000 fiber miles completed and more than 326,000 households and 7,400 businesses subscribed to broadband due to BTOP adoption programs.

The panelists also emphasized the BTOP grant challenges and problems of the last two years. The federal FirstNet program that became law in February resulted in seven public safety broadband grants’

suspension in May, for instance. These seven grantees have lingered with uncertainty since then (CD July 19 p4). Several states proposed restricting community broadband with new laws, which Baller called “an unadulterated ugly.” He has helped fight these broadband barriers as part of his legal duties, he said. In 2012, such bills were proposed in Minnesota, Georgia and South Carolina and one in South Carolina passed, he said. These bills “could theoretically have a significant adverse impact” on BTOP grantees keeping them from fulfilling their goals in those regions, Baller cautioned. “We are doing our best to counteract such measures and undo ones that do exist already in as many places as possible.” Baller’s done consulting work for Google and for FCC National Broadband Plan architect Blair Levin’s GigU project linking communities that have colleges to super-fast networks.

Some fiber projects have run afoul of providers who complain of overlapping coverage, noted NATA President Joanne Hovis. These providers are not always happy with the prospect of competition, and it would be “truly unfortunate if these [BTOP] projects are unable to build fiber where it’s so badly needed” or “where competition is so badly needed,” she said. “It would be unfortunate if fiber networks are stopped in their tracks because of federally funded copper networks.” She said she wishes for “more political guidance in this matter.”

Pole attachments pose a challenge for many BTOP grantees, panelists said. It’s uncertain how long resolving those issues will take and how much they’ll cost in any given grant, Sherwood said. One huge challenge was the 2011 tsunami in Japan, which “put a stress on fiber” availability on an international level, she said. “Up in Maryland, we actually secured our contract just prior to the tsunami, so we benefited from that.”

These BTOP grants benefit communities in major ways, panelists said. They all identified strong successes. These benefits will visibly “begin to pop” in the next six to nine months, Sherwood predicted. Fiber needs to be connected to libraries, schools and community centers, she said. There’s been “a very strong uptick in recent months of marketing” and “customers are beginning to line up,” Baller said. These grants give “robust connectivity” to the sectors that most need it, he said. “We have a critical need in this country to improve our education system, to improve our healthcare system, to improve our capacity for economic development, right away.”

These grants may have helped create jobs in ways people haven’t yet considered or quantified, argued Hovis. She saw benefits within the first nine months of the American Reinvestment and Recovery Act of 2009’s passage, she said. “What I saw was the creation of jobs just in the process of planning, partnering, and building projects or expanding existing projects in order to prepare grant applications to compete for BTOP funds.” It’s “visible, and it’s real,” agreed Sherwood, adding that BTOP is “definitely having an impact” on job creation “on all levels.”

The middle-mile business model pioneered in many BTOP grants has “transformative” potential, Hovis added. It’s begun to “show real dividends” and seems to be stirring “new rounds of projects,” with local rather than federal money, she said, pointing out recent efforts in Santa Fe, N.M. “The most significant contribution of the program will be in the awakening of tens of thousands of businesses and communities to the potential benefits that access to broadband, particularly high-capacity broadband networks, can provide across the economy,” Baller said. Four billion dollars is not an enormous sum in the bigger picture, but it accomplished a shift in awareness, he explained. Awareness matters because the U.S. started “well behind” other leading nations in broadband investment, he said. “But what the BTOP program has done ... is put broadband front and center in the attention of our nation as something we’ve got to do right over the next few years if we want to be the leading country in the world.” — *John Hendel*

Most-Favored-Nation Clauses

Antitrust Agencies, Courts Delve Deeper into Enforcement, Legal Treatment of MFNs

Economic and legal thinking on antitrust enforcement and policy concerning most-favored-nation (MFN) clauses continues to evolve at regulatory agencies and in the courts, antitrust attorneys and experts said Monday at a joint FTC-Justice Department workshop on MFNs. The clauses are used in contracts at different levels of distribution and are used in a variety of markets, said Jonathan Baker, an American University law professor. Some telecom and media deals, such as TV carriage contracts, have MFNs.

Courts are dealing with MFN issues more often, some antitrust attorneys and experts said during a different panel. Antitrust claims regarding MFNs “have arisen in a number of industries,” said Andrew Gavil, director of the FTC's policy planning office. The courts “have evolved toward more consistent recognition of both the anti-competitive and pro-competitive potential,” he said. MFNs emerged in the form of consent decrees in the 1990s, and in recent cases, like the 2010 Justice Department case against Blue Cross Blue Shield of Michigan, Gavil said. Dormant MFNs still can be problematic and deter entry into a market, he said.

However, “there are few, if any cases, that provide a complete analysis in the merits based on evidence,” Gavil said. There are hardly any litigated examples of the anticompetitive effects or efficiencies of MFN use, he said. Although there isn't a decision to point to, there is guidance, Gavil said. He recently left Howard University, where he taught antitrust law, to join the FTC.

The MFN use “limits the ability of the seller to discriminate in price, but it doesn't entirely eliminate that ability,” Baker said. A bottle maker “can charge a higher price to a brewer that doesn't have an MFN with it, but it can't charge a lower price,” he said. Therefore, a firm exercising market power “may want to discriminate in price if it can, but a monopolist that charges a single monopoly price can harm competition even without that extra benefit,” he said. “The limitation on price discrimination inherent in an MFN doesn't prevent the exercise in market power.”

Opportunism, transaction cost reduction, time inconsistency and quality commitment are some of the efficiencies of MFNs, said Judith Chevalier, a professor at the Yale University School of Management. Opportunism and transaction costs are the most prevalent reasons, she said. There may be circumstances where a fast food chain asks a credit card company for a lower per transaction fee in exchange for a bigger fixed fee, she said. That will give the chain an advantage every time it sells items using a particular credit card, she said.

Transaction-cost reductions happen when the MFN involves “one seller free-riding off of the price discovery efforts of another,” Chevalier said. The transaction costs “are substantial enough that, absent a most favored customer clause, either of the transaction costs would be inefficiently high or contracting wouldn't take place because transaction costs are too substantial,” she added.

MFNs are implemented in different ways, Baker said. They can be included in an explicit contract with one or more companies, he said. The terms could be negotiated bilaterally or the MFN “can be used as a method of price determination in a long-term contract,” he said. It also could be implemented by an-

nouncing it as a policy “that’s applied to all buyers across the board,” he said. “The MFN has to specify the period when the price comparison takes place.” Most antitrust scrutiny has gone to MFNs that operate between suppliers and intermediate goods producers, but they can also be used by retailers who are selling to consumers, he added.

MFNs can be hard to enforce in practice, said Chevalier and another antitrust expert. There’s a number of situations in which industries appear to look “MFN-like even though no one has formal MFNs,” Chevalier said. “Enforceability tends not to be an issue with the MFNs in antitrust scrutiny,” Baker said. MFNs “are usually an attempt by a buyer to assure that it’s getting the best possible price,” said Janet McDavid, a Hogan Lovells antitrust attorney. Most MFNs handled at that firm are either pro-competitive or competitively neutral, she said. “They’re fairly rarely enforced.” — *Kamala Lane*

IP Big in TPP

Stakeholders, Negotiators Meet in Leesburg to Talk IP

LEESBURG, Va. — Negotiators from ten countries heard both sides of the intellectual property rights story, at a Sunday stakeholder engagement event hosted by the Office of U.S. Trade Representative. The event was designed to give stakeholders a chance to interact with the representatives of countries that are working on the Trans-Pacific Partnership Agreement.

A widely available leaked draft of the TPP leaves too much room for restrictive interpretation, said Public Knowledge Staff Attorney Rashmi Rangnath, who presented on “Copyright Limitations and Exceptions in the TPP.” Rangnath pointed to the “three-step test,” which she said could give countries too much freedom in determining what constitutes legal unlicensed use of copyright material. She suggested negotiation proposals from the USTR spell out limitations and exceptions to intellectual property laws in more detail.

Like many who presented on what they see as the potential dangers of TPP’s intellectual property provisions, Rangnath stressed that stakeholders are working off of leaks of proposal drafts and criticized the lack of transparency surrounding the negotiations, referring to it as “a lockdown.” Without access to the government’s proposals, she said, “there’s no mechanism to hold them accountable.” While she’s unsure how much the leaked draft will resemble the final language, “my sense is that the most aggressive provisions will get watered down” after pushback from public interest groups and other countries participating in TPP negotiations, she said.

International Intellectual Property Alliance (IIPA) counsel Steven Metalitz challenged those that criticize USTR for its lack of transparency. “It’s quite understandable that people have this concern,” he said, but there’s little room for transparency in the negotiation process. “Trade negotiations are not going to be done in a fishbowl,” he said. The U.S. would need participants’ cooperation in opening up the negotiations, Metalitz said. “It’s not just something the U.S. government can do on its own.”

By including the three-step test, Metalitz said, the TPP “uses a standard that every country in the TPP already recognizes.” The IIPA attempted to combat misinformation about things like the three-step test during its presentation, titled “IP Chapter in TPP: Myths and Realities — A Fact Check.” The pres-

entation cited claims by public interest groups such as the Electronic Frontier Foundation and Public Knowledge that the TPP could limit participating countries' abilities to determine copyright limitations and exceptions, claims that the TPP could be used to deny Internet access to individuals and claims that the TPP is linked to failed anti-piracy legislation Stop Online Piracy Act and PROTECT IP Act.

These claims have dominated much of the online discussion about intellectual property rights in the TPP, Metalitz said. He hopes the IIPA presentation and presence at the forum will allow negotiators and other stakeholders to hear the other side of the story. "It's more exciting for people on the Internet to hear that their rights are being taken away," he told us when asked why he thought the discussion is imbalanced.

The TPP's intellectual property provisions can help more than just major content producers, said Copyright Alliance Executive Director Sandra Aistars. The TPP can provide "strong intellectual property protections for everybody," including the individual artists and content producers the alliance works with, she said. That alliance displayed at the event artwork by photographer Matt Herron, whose work includes images of civil rights protests from the 1960s. Without adequate intellectual property protections, Aistars said, images like Herron's could be taken and used for commercial purposes. "That destroys the integrity of the image," Aistars said, noting that the alliance is "a very strong defender of fair use" and Herron frequently allows educators to use his photographs.

The event's setup was problematic, Rangnath said, explaining that she felt "very rushed" during her presentation. The ten-minute presentations took place simultaneously in four crowded adjacent rooms beginning at 11 a.m. At the same time, stakeholders interacted with negotiators and distributed informational material at presentation tables located in a nearby building. The Electronic Frontier Foundation had criticized the setup for being too condensed. The USTR said (<http://xrl.us/bno8aj>) it chose to include both presentations and time for one-on-one interaction after receiving feedback from stakeholders about previous rounds of negotiations.

Computer & Communications Industry Association Vice President Matt Schruers agreed the event was "quite chaotic," but credited the USTR for "managing a lot of interest in a framework that isn't designed to be open." Schruers noted that the USTR is doing more to include stakeholder input for the TPP than has been done in the past. — *Kate Tummarello*

Comm Daily® Notebook


The FCC's regulatory fee process is "based on obsolete data" and needs to be updated, the GAO said in a study released Monday (<http://xrl.us/bno8c6>). On average over the past decade, the commission collected 2 percent more in regulatory fees than it was required to — about \$66 million in excess fees that "cannot be used without congressional action," the report said. The Communications Act requires the FCC to base its fees on the number of full-time equivalents that perform regulatory tasks in certain bureaus, but the commission based its 2011 regulatory fee assessments on 1998 data, the report found. "After 13 years in a rapidly changing industry, FCC has not validated the extent to which its fees correlate to its workload," the GAO wrote, finding the agency's practice is "inconsistent with federal guidance on user fees." As a result, "companies in some fee categories may be subsidizing companies in others," the report said. Due to lack of transparency — specifically, "the limited nature of the information FCC has

published on it” — it's difficult for the telecom industry and other stakeholders to understand and provide input on fee assessments, GAO said. It recommended the FCC look at the examples of other fee-funded regulatory agencies for guidance, such as the Nuclear Regulatory Commission, Federal Energy Regulatory Commission, and Canadian Radio-television and Telecommunications Commission.

FCC Chairman Julius Genachowski is “honored” to be holding a live Twitter chat on Tuesday at 1:30 pm, he tweeted Friday (<http://xrl.us/bno7vp>). The chairman wants tweeters to use the hashtag “#AskJulius” to send him questions. As of Monday afternoon, users had asked four questions: how social media has made the FCC’s job more challenging; what the FCC is doing to enforce robocall rules against politicians who call cellphones; whose idea it was to limit Twitter to 140 characters; and whether Sept. 11 “should be reserved for remembrance of the victims instead of your political chats with the public.”

Capitol Hill

The FCC takes its visits to deployment sites and meetings with carriers “very seriously,” and continues to make adjustments to its USF reforms “as necessary,” Chairman Julius Genachowski told Alaskan members of Congress in a letter made public Friday (<http://xrl.us/bno76j>). Genachowski wrote in response to correspondence from the Alaskan lawmakers urging the commission to grant a waiver to Windy City Cellular, which operates on the remote island of Adak (CD Aug 13 p6). Genachowski pointed to the April “Benchmarks Order” in which the Wireline Bureau revised the high-cost loop support benchmark categories to reflect similarly situated providers, added new variables, and adjusted the phase-in period of the changes. Genachowski noted the reform was unanimously approved by the commission, and said it was important to “keep moving forward” on implementation, and “not roll back progress.” He also pointed to the six-month waiver already granted to Windy City, which gave the carrier \$40,000 “to sup-

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port the status quo” in its service area while the commission considered a petition by its parent company, Adak Eagle Enterprises. "During my trip to Alaska last year, I had an opportunity to visit deployment sites and meet with many of the Alaska carriers to get an understanding of the unique challenges they face. We take these visits and meetings very seriously, and the Commission — and the staff on delegated authority — continues to make adjustments to our reforms as necessary," the letter said.

Wireline

The FCC should revisit its copper retirement policies, CompTel executives told Wireline Bureau officials and Chief Technology Officer Henning Schulzrinne, an ex parte filing said (<http://xrl.us/bno7qs>). Current copper technology allows for symmetrical speeds at “orders of magnitude larger” than the FCC’s 4 Mbps downstream / 1 Mbps upstream broadband speed requirement in the USF/intercarrier compensation order, CompTel said in an attached presentation (<http://xrl.us/bno7q8>). Speeds of “up to 800 Mbps at distances up to 65,000 feet” are achievable using various copper-loop configurations, CompTel said. CompTel referred to its 2009 proposal to “preserve this remarkably resilient and useful legacy network” in furtherance of FCC goals of encouraging competition, promoting advanced services and finding the most effective and efficient means of ensuring affordable broadband services.

The FCC Wireline Bureau announced the agenda for its Connect America Fund Phase II cost model workshop (<http://xrl.us/bno77a>). The workshop, to be held Thursday and Friday, will discuss the design and mechanics of two cost models. The model submitted by the ABC Coalition estimates the cost of providing broadband service to the entire nation; the model submitted by Alaska Communications Systems estimates the cost of providing service to Alaska. The workshop will discuss the CostQuest Broadband Analysis Tool and its economic underpinnings, and will review the tool's current results.

Accipiter deserves a limited and targeted waiver of the FCC’s USF rules, President Patrick Sherrill told the chief of the Wireline Bureau and aides to Commissioners Jessica Rosenworcel, Robert McDowell, Mignon Clyburn and Chairman Julius Genachowski (<http://xrl.us/bno7rx>). Accipiter wants the commission to use Accipiter’s most current line count data as a “replacement variable” in the per-line formula and regression formulas for determining its USF limitations, it said. A waiver, while still capping Accipiter’s support, would let the telco maintain service and repay its loans, it said.

The FCC must differentiate between Type 1 and Type 2 special access facilities when it requests data on the state of competition in the special access marketplace, Sprint Nextel told Wireline Bureau officials Friday, an ex parte filing said (<http://xrl.us/bno7p9>). The commission must also analyze both actual and potential competition “in a rigorous way,” Sprint said.

Tw telecom detailed how it provides special access services and bills customers, and described the data it would be able to give the FCC in response to a mandatory data request (<http://xrl.us/bno8as>). The letter responded to a request from a Wireline Bureau official, and discussed hybrid circuits — circuits that are “partially on-net and partially off-net.” The billing details were redacted from the public document.

Wireless

FiberTower asked the FCC to grant it a waiver or time extension to meet the substantial service requirement faced by its 24 and 39 GHz licenses. The request came in a letter to Chairman Julius Gena-

chowski. “Granting this request will not only further the Commission’s policy goals and serve the underlying purpose of the Commission’s build-out rules, it would save countless jobs at FiberTower and its vendors and subcontractors who are [predominantly] U.S. based,” the wireless backhaul provider said. “It would also protect FiberTower’s industry partners, including the major wireless carriers, from economic harm, and ensure that FiberTower’s commercial, government, first responder, and school customers continue to receive uninterrupted service.” FiberTower reminded Genachowski it’s “a key supplier to rural and urban America and has entered into spectrum leases” across the U.S. “FiberTower has also taken a number of actions to ensure that its non-deployed spectrum assets are available for lease in the secondary market and that it is prepared to provide robust backhaul and transport services in response to growing market demand,” the letter said. “These actions, including developing market-viable equipment through a variety of suppliers and making that equipment — along with a spectrum lease — available to rural and urban customers alike, are precisely the types of actions that aggressively promote your important Broadband Acceleration Initiative goals.” All of the millimeter wave band licensees faced June 1 build out deadlines. Many have requested extensions.

The National Public Safety Telecommunications Council warned school systems that many must comply with the FCC’s Jan. 1 narrowbanding deadline. “Schools, colleges, and universities use two-way radios for campus safety and security, athletic departments, school bus management, and facilities management,” NPSTC said. “In addition, two way radios are used to help coordinate everything from crowd control to event management. ... If you use wireless communications, other than your laptop, Bluetooth, or Wifi this mandate could affect you.”

The FCC should allow license-exempt and opportunistic use of licensed spectrum by cognitive license-exempt devices in the TV bands, the WhiteSpace Alliance said in comments filed at the agency. “Across industries the use of the [TV white spaces] spectrum is vital, given its propagation characteristics, improved building penetration and enhanced regional and rural coverage,” the alliance said (<http://xrl.us/bno7uh>). “WhiteSpace Alliance urges that spectrum should not remain unused if there are radio technologies that can make opportunistic use of the spectrum. Licensed use should emphasize interference protection rather than exclusive use. Therefore, the existence of licensed service should no longer prevent other innovative uses, provided that protection for the licensed users is maintained.”

The FCC Public Safety Bureau took steps leading to transfer of the 700 MHz D-block to the new FirstNet, consistent with rules in the February spectrum law. “We delete the rules granting authority to the Public Safety Broadband License (PSBL) and replace these rules with provisions reflecting the Public Safety Spectrum Act’s directive to license spectrum to FirstNet,” the order said (<http://xrl.us/bno7c5>). “FirstNet’s Board has been appointed and it is now itself in a position to file a request on its own for the license to which it is entitled under the Public Safety Spectrum Act. Accordingly, we are prepared to take the ministerial step of granting a new license to FirstNet under a new call sign as soon as possible after FirstNet informs the Bureau that it has been established in accordance with the terms of the Public Safety Spectrum Act and submits a request for the license specified by Section 6201 of the Public Safety Spectrum Act.” Public safety officials pushed hard to gain control of the D-block, giving public safety an additional 10 MHz of spectrum for the proposed national first responder network, which was in part funded by the spectrum law. Acting Secretary of Commerce Rebecca Blank disclosed the members of the FirstNet board last month (CD Aug 21 p1), chaired by longtime telecom executive Samuel Ginn.

The FCC Wireless and Wireline bureaus modified the road miles eligible for Mobility Fund Phase I support. The FCC did not change the census blocks eligible for coverage. “More than 80 percent of the

biddable items have either no change in road miles or a change of less than 1 mile,” the order said (<http://xrl.us/bno7ek>). “Fewer than 200 of the more than 14,000 biddable items have changes of at least 1 road mile and more than 25 percent of the previous total road miles.” The bureaus also rescheduled the mobility fund mock auction, to Sept. 21 from Sept. 25. “The mock auction will enable qualified bidders to become familiar with the FCC Auction System and to practice submitting bids,” they said. “Auction 901 will proceed as scheduled on Thursday, September 27.”

There are 100 mobile operators with launched commercial LTE networks, following the recent start of the C-Spire Wireless LTE network, 4G Americas said Monday. The number of new LTE network launches is now more than doubling annually and should reach 133 by the end of 2012, the group said. “Among the numerous benefits of LTE technology is the flexibility of LTE to be deployed in a wide variety of spectrum bands and its scalability to operate in various bandwidths up to 20 MHz,” said a spokeswoman for the group of carriers and equipment makers. “With the scarcity of spectrum, LTE provides operators with the most spectrally efficient mobile broadband technology available today” (<http://xrl.us/bno7vx>).

Livewire Mobile now manages the Sprint Nextel and Metro PCS music download services, Live-wire said Monday. The company’s new contracts follow other recent service launches, including the Siren music service for Canada-based Public Mobile and the Rumpus music discovery app for Android. Live-wire said it expects the new deals will more than double revenue from 2011 during FY 2013. The company said it will be opening a new Washington, D.C.-area office to support the added contracts. “We’ll be working with our label partners and our customers over the coming months to improve the service, ensuring that if you are a Sprint or MetroPCS subscriber you will get the very best music experience possible,” CEO Matthew Stecker said in a news release (<http://xrl.us/bno7tk>).

Internet

Copyright reform is the right way to support the creative sector in the digital age, European Digital Agenda Commissioner Neelie Kroes said Monday at the Lisbon Council Intellectual Property and Innovation Summit in Brussels. But the debate on copyright “often involves extreme positions, rigid views, and emotive arguments,” her written comments said. The issue is complex, so policymakers must be pragmatic, she said. The copyright directive was adopted in 2001, and the European Commission proposals it was based on go back to 1998. In that year, Mark Zuckerberg of Facebook was 14, YouTube didn't exist and most people listened to music on the radio, CDs or tape, she said. Since then, huge changes have happened to the content business, research activities and all other sectors, particularly that creation and distribution are in everyone's hands, she said. Policymakers should help artists live from their art, stimulate creativity and expand consumer choice, Kroes said. Copyright can't be considered in isolation, but from the standpoint of how it fits into the real world, she said. The current system doesn't do that, because online licensing restrictions and the problem with orphan works make it impossible to buy music legally, particularly across borders, she said. There are other problems as well, which is why the EU must enact substantive copyright reform, she said. Every day governments fail to respond, “we are missing out,” she said. The consequences are initiatives Europe can't seize, potentially high-flying ideas that get stuck on the runway, and “the glory and the benefits taken by American companies, not European,” Kroes said. The EC is assessing whether changes are needed to EU laws, and the World Intellectual Property Organization is looking at possible new copyright exceptions and limitations. During the assessment, “we should leave passion aside” and deal with the issues realistically, Kroes said.

State Telecom Activities

Google Fiber closed its pre-registration period in Kansas City, with 180 “fiberhoods” of 202 qualified for service since July 26, Google said Monday. The pre-registration process has been “the first step” in expanding Internet access and Google’s process of connecting libraries, schools and community buildings, said Google Access General Manager Kevin Lo (<http://xrl.us/bno7os>). The final number of qualified fiberhoods won’t be revealed until Thursday because some addresses are still being processed and verified, Google said. “Affordable access at home is important too,” Lo said. “So one of the three packages we offer is a Free Internet plan. Homes in Kansas City can get their own Fiber connection and today’s average Internet speeds for \$0 per month, plus a construction fee.”

Telepsychiatry has saved South Carolina \$21.7 million, Polycom said Monday. The company has run a two-year-old video consulting program in hospitals throughout the state in conjunction with the South Carolina Department of Mental Health (SCDMH), it said (<http://bit.ly/Pba95h>). “The program, which originally connected 15 hospitals, has enabled SCDMH psychiatrists to conduct more than 12,100 rapid consultations with patients in hospital emergency departments, reducing the cost per treatment episode by over \$1,800,” Polycom said, noting it’s now expanding the program to 21 hospitals total.

The National Association of Regulatory Utility Commissioners on Monday lauded Lifeline Awareness Week initiatives around the country. The fourth annual week of outreach is Sept. 10-16. State commissions in Washington, New York, Kansas, Florida, Iowa, Georgia, Michigan, Tennessee and Virginia have announced efforts to celebrate it, according to NARUC. “Since the first Lifeline Awareness Week in September 2009, the number of participants has increased, as demonstrated by Universal Service Administrative Company findings,” NARUC said (<http://xrl.us/bno652>). “For example, 25 States now have participation rates at or just below 50%, whereas in 2008, only 18 States reached those levels. In addition, six States now boast participation rates higher than 50%.” The 2012 Lifeline Awareness Week efforts focus on new federal rules for the program, NARUC noted.

International Telecom

The U.K. needs new broadband targets, broadband research firm Point Topic founder Tim Johnson is scheduled to tell Parliament members Tuesday at a Westminster eForum seminar on “Broadband Britain.” The current goal of having the “best superfast broadband in Europe by 2015” isn’t achievable as stated, and isn’t relevant to the country’s needs, he plans to say. The U.K. needs massive investment to provide homes and businesses with good-quality Internet access and in getting people to use it, rather than “just chasing after speed records,” Johnson plans to say. Instead of trying to be the best in Europe, Britain should judge itself against other major European economies such as France, Germany and Italy, Point Topic said Monday. The country’s broadband infrastructure compares well with the other members of the “Big Four,” but getting ahead of them, especially Germany, by 2015 is a big challenge, the firm said. Government priorities should be to ensure that the over 3 million homes and businesses without broadband of at least 2 Mbps download speed have it, it said. The U.K. should also make sure that broadband services are fit for their purpose and can, for instance, support video streaming or telecommuting properly. The third and biggest gap is social, Point Topic said. More than 7 million homes don’t have fixed-line Internet access, when bring-

ing those families into the Internet community would improve life for them and "spin off a whole range of other economic benefits," it said.

Vonage's shares are undervalued given possible product moves, Phoenix Partners Group analyst Robert Routh wrote in a research report Monday. Vonage recently began an international calling plan with Globe Telecom in the Philippines and expanded its unlimited voice plan to wireline and mobile phones in Vietnam and South Korea. Vonage also recently started Vonage World Mexico, which features unlimited voice plans for wireline and mobile, the report said. Vonage's management has repeatedly suggested it's working on developing a "very cheap" domestic voice plan, which the company could partner on or introduce on its own, and Costco would make the most sense as a partner for such a service, Routh said. "We think a partnership that bundles a white label domestic VG service with Costco memberships could be a win-win as it would grow Costco memberships as well as VG subscribers materially with low risk to either party," he wrote, referring to Vonage's stock symbol. "Although unsure, it would seem this partnership makes the most sense as far as offering a white label service with a big box retailer in our opinion."

Telecom Notes

EarthLink and Clearwire entered a wholesale deal to let the Internet network owner offer wireline and mobile broadband service using the wireless company's 4G network. The service, expected to start in early 2013, will initially focus on in-home use, Clearwire said. The service will later expand to mobile devices, while other new services will target small businesses. "Customers are increasingly equating broadband services with wireless services and our wholesale agreement with Clearwire will allow EarthLink to offer the wireless products and services necessary to remain a leader in communications services," Michael Toplisek, EarthLink executive vice president, said in a news release Monday (<http://xrl.us/bno7od>). Clearwire said once its LTE network comes online, the deal will likely expand to offer EarthLink customers LTE.

Cable

The FCC Media Bureau gave itself another two months to make a decision in its review of Project Concord's arbitration award with regard to carriage of NBCUniversal programming, an order said (<http://xrl.us/bno8ab>). Under the terms of the Comcast-NBCU merger order, the bureau had until Sept. 14 to act on the appeals each party filed after the arbitration, it said. "Given the substantial record compiled in the course of this arbitration proceeding, and the complexity of the issues, we find that extending the review period for an additional 60 days will enable the Bureau to review more fully the arbitration decision at issue, and thus serves the public interest," the order said. The bureau's new deadline is Nov. 13.

The Media Bureau gave Enseco a waiver of the FCC's CableCARD rules for Enseco's HD4000 device, a cable box designed for hotel and governmental applications, an order released Monday said (<http://xrl.us/bno8cw>). The waiver will let Enseco sell the device without an analog tuner. The waiver was granted on the "condition that Enseco honor its commitments to limit its marketing and sale to commercial and governmental customers and to properly educate its customers about the fact that the HD4000 is an all-digital device without the ability to receive analog cable," the order said.

Mass Media Notes

Five owners of broadcasters and daily newspapers in the same market sought a delay, to 60 days after the FCC releases an upcoming order on its delayed 2010 quadrennial media ownership review, to change pending requests to the newspaper/broadcast cross-ownership rule. Bonneville International, Calvary, Cox Enterprises, Morris Communications and Scranton Times want to extend the Sept. 27 NBCO deadline for supplements set by the Media Bureau last month (<http://xrl.us/bno79v>). It dismissed as moot those companies' request to extend a cross-ownership waiver deadline for the 2006 ownership review, after the Supreme Court this summer said it wouldn't consider challenges to that quadrennial order. "Changes to the NBCO Rule currently are under Commission consideration on remand from the Third Circuit and in the pending 2010 Quadrennial Media Ownership Review" (CD Jan 20 p4), the five media companies said in a new motion. "Until that proceeding is concluded, the NBCO Rule and the applicable standards for evaluation of waivers of that rule are uncertain and subject to change." Making the companies file waiver supplements now, and at the FCC "the attendant staff review of those requests, would be a substantial waste of both private and administrative resources," said Monday's filing in docket 06-121 (<http://xrl.us/bno8a6>). "The Media Parties hereby represent that they will file such supplements notwithstanding the pendency of any administrative or judicial challenges to the Commission's Report and Order and regardless of whether the NBCO Rule adopted by the Commission is effective or its effectiveness has been stayed."

Obituary

Carson Agnew, 63, former president of Progeny, died Wednesday after a long bout with cancer. He had been vice president of regulatory affairs at NextNav since last year, when Progeny merged with Commlabs to form the new company. Prior to going into the telecom industry, Agnew taught economics and telecom policy at Stanford. He's survived by his wife and two daughters.

Communications Personals

NARUC Executive Committee adds **Jack Betkoski**, Connecticut Public Utilities Regulatory Authority, replacing **David Coen**, Vermont Public Service Board ... Viacom promotes **Scott Mills** to executive vice president-human resources and administration, succeeding **Denise White**, leaving company. ... **Michael Willner** and **Sidney Knafel**, ex-Insight Communications until acquired by Time Warner Cable this year, are leading Penthera Partners, selling software to move HD video between cloud and Internet Protocol-enabled phones and set-tops ... Alcatel-Lucent changes, effective Jan. 1, in management simplification: Chief Financial Officer **Paul Tufano** also becomes chief operating officer; **Robert Vrij** to president-global sales & marketing; **Stephen Carter** named president-managed services, and executive vice president-corporate restructuring; **Philippe Keryer** moves to president-networks & platforms; **Rajeev Singh-Molares** will focus on commercial operations in China ... Networks' Sundance Channel hires **Claudia Gorelick**, ex-Viacom's Logo, as senior vice president-digital media and business strategy ... Mellanox Technologies, a data center interconnection provider, promotes **Jacob Shulman** to chief financial officer as CFO **Michael Gray** retires, effective Nov. 5 ... Equinix hires **Sara Baack**, ex-Level 3, as chief marketing officer.